



STATE OF NEW JERSEY

<p>In the Matter of Najee Jenkins, Fire Fighter (M1874W), Trenton</p> <p>CSC Docket No. 2021-1403</p>	<p>⋮</p>	<p>FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION</p> <p> </p> <p>List Removal Appeal</p>
---	---	---

ISSUED: JULY 2, 2021 (SLK)

Najee Jenkins, represented by George T. Dougherty, Esq., appeals the decision to remove his name from the Fire Fighter (M1874W), Trenton eligible list on the basis of falsifying his application.

The appellant took the open competitive examination for Fire Fighter (M1874W), Trenton, which had an August 31, 2018 closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (OL191105) on September 12, 2019 as the 17th listed candidate. In seeking his removal, the appointing authority indicated that the appellant falsified his application.

On appeal, the appellant presents that he was notified that on September 2, 2020, the City Council, which has no role in the appointment process, was inadvertently provided a memorandum summarizing his motor vehicle record. Further, on September 4, 2020, the former Fire Director sent him a letter indicating that he was not selected due to undisclosed items found during his background check. The appellant states that there is a conflict between the Internal Affairs Unit background check which cleared him for appointment and whatever alternative check was made and sent to the City Council which disqualified him. He believes that the approval process was derailed by someone likely unauthorized to override the Internal Affairs report.

Additionally, the appellant indicates that the only negative entry on his motor vehicle record was a parking ticket during street sweeping hours, which he paid more than five years ago. He asserts that it would be unreasonable to remove him from the list due to this old, minor infraction. The appellant requests a copy of the Internal Affairs background check and the competing check that was summarized and inadvertently sent to City Council. Further, he requests discovery of the documents which generated the rejection, including internal memoranda or other communications which refer to or cite Civil Service law or rules that apply to this matter.

In response, the appointing authority presents a statement from the Acting Fire Director that indicates that the ability to operate a motor vehicle safely and follow all laws is essential and paramount for the Department. He asserts that the appellant's multiple suspensions of his motor vehicle license demonstrate his disregard for motor vehicle safety and laws. The appointing authority presents that the job specification for Fire Fighter indicates driving and maneuvering fire apparatus for optimal firefighting position is an Example of Work and that appointees are required to possess a driver's license if the operation of a vehicle is necessary to perform the essential duties of the position.

The appointing authority submits the appellant's employment application which indicates that he received a 2008 driving without insurance violation and a 2014 speeding violation. His application also notes that his driver's license was suspended in 2009 for one year for not paying the insurance surcharge due to the 2008 offense. The appointing authority presents the appellant's New Jersey five-year driver history abstract indicating that his license was suspended once in 2015, three times in 2016, and once in 2017.

In reply, the appellant notes that the appointing authority did not submit the Internal Affairs unit's background report which cleared him for appointment. However, he asserts that the information that it did supply is sufficient to restore his name to the list. The appellant assumes that Internal Affairs found that his motor vehicle history was either too old to be considered or had nothing to do with his ability to operate a motor vehicle, or both. He states that the only negative aspects on his motor vehicle record occurred prior to 2016, which arose from his driving without insurance in November 2008 and resulted in him having his driver's license suspended for one-year in January 2009. The appellant notes that his driver's license was restored in January 2010. The appellant argues that in Civil Service disciplinary proceedings such records are considered "stale" as affecting the imposition of punishment. He cites case law regarding the "staleness" of past offenses for Civil Service employment standards.

Concerning the job specification for Fire Fighter, the appellant notes that the specification requires that he have a current driver's license. However, he states that the Acting Fire Director's statement that having a driver's license is not enough and

a candidate must have operated his vehicle “safely, following all laws regarding the same” is a gratuitous and unsubstantiated opinion not in the job specification. The appellant asserts that the Acting Fire Director has no authority to inject such overbroad, subjective and therefore unenforceable requirements of operating his vehicle “safely” and “following all laws.” He argues that it is in the public’s interest in conducting a fair selection process which allows for equal opportunities for all Fire Fighters, that the Commission adopted “specifications” which were not only clear, but which were precise as to what was required of each candidate. Therefore, the appellant believes that the Commission must reject an appointing authority’s infusion of nebulous terms such as “driving safely” and “obeying all laws” because they are neither “specific” nor “precise” terms. He argues that an unauthorized interpretation of the Fire Fighter job specification renders all applicants subject to the whim of local appointing authorities, allowing some to disqualify a candidate based on a single prior motor vehicle infraction, while allowing others to appoint under similar circumstances. The appellant states that because his handwritten disclosure of his Motor Vehicle Record was not a barrier to his initial placement on the list, it should not suddenly become the reason for removing him from that list, especially with a statement of explanation that his application was not consistent with the results of his background check.

The appellant certifies that he went through the interview process including the psychological review and believed that he was going to be appointed. Subsequently, he received a letter from the former Fire Director indicating that he was going to be removed due to undisclosed items in his background report. Now, the appellant is learning that he was removed for not being a safe driver. He acknowledges that his driver’s license has been suspended; however, he asserts that the suspensions were not based on any conviction of a moving violation. The appellant asserts that as a Public Safety Telecommunicator for the appointing authority for many years, he has great respect for the law and public safety employees and he does not believe his driving record should prevent him from being a Fire Fighter.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Civil Service Commission (Commission) to remove an eligible’s name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D’Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate’s name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the

candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons.

N.J.A.C. 4A:4-4.7(b)1 provides that an appointing authority that requests removal of an eligible's name from a list shall submit to an appropriate representative of the Commission, no later than the date for disposition of the certification, all documents and argument upon which it bases its request. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative.

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

Initially, it is noted that neither the appellant or the appointing authority, in response to the current appeal, addressed the reason listed for his removal on the certification, namely, falsification. Regardless, on appeal, the Commission has the authority to review all aspects of a candidate's record to determine whether removal from a list is warranted.

Additionally, the appellant certifies that he went through the psychological review and, thereafter, he received a letter from the former Fire Director indicating that he was removed for undisclosed items found in his background check. Pursuant to the Americans with Disabilities Act (ADA), 42 *U.S.C.A.* sec. 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also*, the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. *See also N.J.A.C.* 4A:4-6.5(b) (An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment). The Commission notes that the ADA's restrictions on psychological and medical examinations apply regardless of whether an individual has a disability. *See Roe v. Cheyenne Mountain Conference Resort*, 124 *F.2d* 1221,

1229 (10th Cir. 1997). Therefore, the appointing authority should not have conducted a psychological examination of the appellant until after completing its background investigation and the Commission cautions the appointing authority that should it continue this practice, it could be subject to fines or other appropriate remedies. However, while the appointing authority should not have conducted the psychological evaluation prior to completing its background check, a procedural violation is not grounds for reinstatement to the list when there are sufficient grounds for disqualification. Thus, while the appointing authority would be well served to revise its candidate evaluation procedures to avoid having this issue raised in future cases, based upon the totality of the circumstances presented in this matter, it appears that the appellant's remove from the eligible list is warranted. *See In the Matter of Scott Gordon* (MSB, decided December 18, 2002); *In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002).

Concerning the appellant's request for a copy of the Internal Affairs background check and the competing check that was summarized and inadvertently sent to City Council, and the discovery of the documents which generated the rejection, the record indicates that in response to the appeal, the appointing authority provided all the documentation that was submitted to this agency when it returned the disposition of the subject certification, which complies with *N.J.A.C. 4A:4-4.7(b)1*. There is no requirement under Civil Service law or rule that requires an appointing authority to provide an Internal Affairs report and all documentation that generated the rejection, including internal memoranda. *See In the Matter of Woodless Dorsainvil* (CSC, decided May 19, 2021).

It is also noted that while an appointing authority may request that a candidate be removed from a list, it is this agency that initially determines if there are grounds for removal and the basis for that removal. Further, on appeal of this agency's initial decision, it is the Commission that is the ultimate decision maker on whether a candidate should be removed from the list and the basis for that removal. Therefore, while the appointing authority indicates in its response that it removed the appellant from the list for not operating a vehicle safely and not following motor vehicle laws, the record indicates that this agency initially approved the appellant's removal from the subject list based on falsification of application.

In this matter, a review of the appellant's five-year driver history abstract indicates that his driver's license was suspended once in 2015, three times in 2016, and once in 2017. However, the appellant **only indicated on his application that his driver's license was suspended in 2009**. It is noted that applicants are responsible for the accuracy of their applications and any failure to include information is at their peril. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Therefore, the record demonstrates that the appellant's failure to include all of his driver's license suspensions indicates that he lacks the good judgment and character to be a Fire Fighter. In this regard, it is recognized that a

firefighter occupies a highly visible and sensitive position within the community and the standard for an applicant includes a good character and utmost confidence and trust. *See N.J.S.A 40A:14-9*, which provides, in pertinent part, that except as otherwise provided by law, no person shall be appointed as a member of the paid or as a paid member of a part-paid fire department and force unless he is of good moral character. The appellant's failure to and/or selectively provide information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Fire Fighter. *See In the Matter of Scott DeCarlo* (CSC, decided October 18, 2017).

It is also noted that a driving record does not provide evidence of inability to perform the duties of a Fire Fighter in the way a poor driving record may evidence a disrespect for the law adversely affecting a Police Officer's ability to perform his or her duties. *See In the Matter of John Rispoli*, Docket No. A-6849-97T3 (App. Div. December 2, 1999). However, if the possession of a driver's license is essential to the position, a candidate for Fire Fighter can be removed for an unsatisfactory driving record. *See In the Matter of William Bryant, Jr.* (MSB, decided July 25, 2000). Further, when an appellant is removed for an unsatisfactory driving record for a position as a Fire Fighter, the appellant has the burden of proof to demonstrate that a driver's license is not essential to the position. *See In the Matter of Patrick Farrell, Jr.* (CSC, decided November 21, 2018) and *In the Matter of Paul Newman* (CSC, decided November 21, 2018).

In this case, the appointing authority indicates that the ability to drive is essential to the position. The appellant does not dispute this. Instead, he highlights that he has a current driver's license. Therefore, he believes that he can perform the essential duty of operating a motor vehicle as indicated under the job specification for Fire Fighter. The record indicates that the appellant received a driving without insurance violation in 2008, had his driver's license suspended in 2009, received a speeding ticket in 2014, had his driver's license suspended once in 2015 and three times in 2016, received an operating a motor vehicle without proof of insurance in 2016, and had his driver's license suspended in 2017, where the suspension ended on August 30, 2017, which was approximately one year prior to the August 31, 2018 subject examination closing date.¹ While the appellant's driving history shows a continuous lack of respect for the motor vehicle laws, the Commission need not decide whether the appellant has an unsatisfactory driving record for a Fire Fighter as the appellant was appropriately removed for falsification.

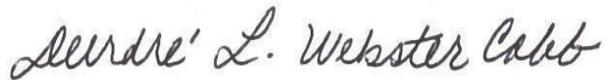
ORDER

Therefore, it is ordered that this appeal be denied.

¹ The appellant also indicated that he received a ticket at some point for parking during street sweeping hours.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries

and

Correspondence

Allison Chris Myers
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Najee Jenkins
George T. Dougherty, Esq.
Steven Ponella
Wesley Bridges, Esq.
Division of Agency Services
Records Center